

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
JESSE R. AYALA,)	
)	CASE NO. BK05-40903
Debtor(s).)	
JESSE AYALA,)	A05-4018
)	
Plaintiff,)	4:04CV3221
)	
vs.)	CH. 7
)	
PANHANDLE COMMUNITY SERVICES,)	
)	
Defendant.)	

REPORT & RECOMMENDATION

This case was transferred from the district court because the plaintiff filed a Chapter 7 bankruptcy case.

After reviewing the matter, I respectfully recommend to the United States District Court for the District of Nebraska that reference of this case be withdrawn for further proceedings. The case involves issues of federal law not commonly dealt with by this court; the plaintiff has requested a jury trial on those issues, which is more appropriately held in district court; and the case had already progressed to the pretrial conference and trial stage by the time it was stayed as a result of the bankruptcy petition. These reasons all favor the return of the case to the district court.

The Chapter 7 trustee is currently the real party in interest on behalf of the debtor's bankruptcy estate and, by separate order (attached hereto), has been directed to either intervene or abandon the estate's interest within 30 days.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: August 3, 2005

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Joy Shiffermiller	Paul Hofmeister
Stacy Nossaman-Pettitt	Philip Kelly
U.S. Trustee	

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)	
PANHANDLE COMMUNITY SERVICES,)	
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Defendant.)	

ORDER

This adversary proceeding was transferred from the district court because the plaintiff filed a Chapter 7 bankruptcy case. By separate document, I am recommending to the United States District Court for the District of Nebraska that it withdraw the reference of the case from the bankruptcy court for further proceedings. Because the Chapter 7 trustee is presently the real party in interest for purposes of this litigation, he should either intervene in the case or abandon the estate's interest to the debtor.

IT IS ORDERED: The Chapter 7 trustee shall either intervene or abandon the claim by September 2, 2005.

DATED: August 3, 2005

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Joy Shiffermiller	Paul Hofmeister
Stacy Nossaman-Pettitt	Philip Kelly
U.S. Trustee	